JOBNAME: No Job Name PAGE: 1 SESS: 1 OUTPUT: Mon Aug 11 15:22:58 2014

Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris

HIGH COURT (KUALA LUMPUR) — SUIT NO 23NCVC-37–03 OF 2013
ROSILAH YOP JC
20 JUNE 2014

Civil Procedure — Stay of proceedings — Application for — Appeal against defamation judgment — Application for stay of execution of judgment pending conclusion of appeal — Special circumstances warranting stay of proceedings — Allegation that right to fair trial would be prejudiced — Whether applicant had special circumstances to allow stay of proceedings

The plaintiff had filed a defamation suit against the defendant and after a full trial, the court allowed the plaintiff's claim against the defendant and an injunction to restrain the defendant to state or even from further publishing or causing published the defamatory images or image of any word defamatory of the plaintiff, either verbally or via print media or the internet ('the judgment'). The defendant filed an appeal against the judgment and filed an application for a stay of execution of the judgment pending the conclusion of his appeal. In support of his appeal, the defendant submitted that he was summoned by two individuals and he was worried that the judge would probably apply the judgment in those cases and this would prejudice his right to a fair trial in those cases. The defendant further averred that if the judgment was not stayed, his appeal would be rendered nugatory.

Held, dismissing the application with costs:

(1) The defendant's averments were not supported by any evidence. There was no merit in the defendant's argument. The prime consideration was whether the defendant had shown that there were special circumstances that would warrant a stay of execution and the defendant had failed to show any. Ultimately, there were no special circumstances to justify the grant of a stay of execution here. The defendant failed to elaborate and provide any evidence of how the judgment, if enforced by the plaintiff, would render his appeal nugatory (see paras 9–10).

(2) This judgment was monetary in nature. The monetary judgment of the court was for a sum of RM800,000 and costs of RM50,000. The defendant had never disputed the plaintiff's ability to repay the amount RM850,000 to the defendant in the event that the defendant was successful in his appeal (see para 11).

JOBNAME: No Job Name PAGE: 2 SESS: 1 OUTPUT: Mon Aug 11 15:22:58 2014

[Bahasa Malaysia summary

Plaintif telah memfailkan tindakan fitnah terhadap defendan dan selepas perbicaraan penuh, mahkamah membenarkan tuntutan plaintif terhadap defendan dan injunksi untuk menghalang defendan daripada menyatakan atau menerbitkan selanjutnya atau menyebabkan penerbitan imej fitnah atau imej apa-apa perkataan yang memfitnah plaintif, sama ada secara lisan atau melalui media cetakan atau internet ('penghakiman'). Defendan memfailkan rayuan terhadap penghakiman dan memfailkan permohonan untuk penangguhan pelaksanaan penghakiman sementara menunggu keputusan rayuannya. Dalam sokongan rayuannya, defendan berhujah bahawa dia disaman oleh dua individu dan dia risau bahawa hakim akan mungkin mengguna pakai penghakiman di dalam kes-kes tersebut dan ini akan memprejudis haknya kepada perbicaraan adil di dalam kes-kes tersebut. Defendan selanjutnya berhujah bahawa jika penghakiman tidak ditangguh, rayuannya akan menjadi tidak berguna.

Diputuskan, menolak permohonan dengan kos:

(1) Penghujahan defendan tidak disokong oleh mana-mana keterangan. Tidak terdapat merit dalam penghujahan defendan. Pertimbangan utama adalah sama ada defendan telah menunjukkan bahawa terdapat keadaan khas yang akan mewajarkan penangguhan pelaksanaan dan defendan telah gagal untuk menunjukkan apa-apa keadaan. Akhirnya, tidak terdapat keadaan khas untuk menjustifikasikan pemberian penangguhan pelaksanaan di sini. Defendan gagal untuk menghuraikan dengan lebih lanjut dan memberikan apa-apa keterangan bagaimana penghakiman tersebut, jika dikuatkuasakan oleh plaintif, akan menyebabkan rayuannya tidak berguna (lihat perenggan 9–10).

(2) Penghakiman ini bersifat kewangan. Penghakiman kewangan mahkamah adalah untuk jumlah sebanyak RM800,000 dan kos sebanyak RM50,000. Defendan tidak pernah mempertikaikan kebolehan plaintif untuk membayar balik jumlah RM850,000 tersebut kepada defendan jika defendan berjaya dalam rayuannya (lihat perenggan 11).]

Notes

For cases on application for stay of proceedings, see 2(4) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 8112–8158.

Cases referred to

Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257; [2003] 4 CLJ 1, FC (refd)

Leong Poh Shee v Ng Kat Chong [1966] 1 MLJ 86 (refd)

Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd [2002] 3 MLJ

JOBNAME: No Job Name PAGE: 3 SESS: 1 OUTPUT: Mon Aug 11 15:22:58 2014

A 49; [2002] 3 CLJ 380, CA (refd)
Serangoon Garden Estate Ltd v Ang Keng [1953] 1 MLJ 116 (refd)

Shahid Adli (Daim & Gamany) for the plaintiff.
Wan Muhammad Azri bin Wan Deris self represented.

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Rosilah Yop JC:

ENCLOSURE 28

C **[1]** This is an application by the defendant for stay of execution of the order dated 28 February 2014 pending appeal to the Court of Appeal.

[2] The defendant's application is supported by the affidavit in support by the defendant (encl 29) affirmed on 27 March 2014. Other documents filed in
D respect of this application are:

(a) affidavit in reply by the plaintiff (encl 30) affirmed on 6 May 2014; and

(b) corrective affidavit by the plaintiff (encl 36) affirmed on 28 May 2014.

E BRIEF FACTS

[3] The plaintiff had filed a defamation suit against the defendant.

F **[4]** On 28 February 2014, after a full trial, the court gave the following order:

(a) the plaintiff's claim against the defendant is allowed;

(b) damages in the amount of RM800,000 to be paid by the defendant to the plaintiff;

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(c) interest in the amount of 4% per year on the amount of damages above from the date of judgment till the date of full settlement;

(d) an injunction to restrain the defendant and each of them, whether by himself, servants or agents of by any manner whatsoever state or even from further publishing or causing published the defamatory images or image of any word defamatory of the plaintiff, either verbally or via print media or via the internet; and

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(e) costs to be paid by the defendant in the amount of RM50,000.

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[5] On 12 March 2014, the defendant filed an appeal against the judgment dated 28 February 2014. This is the defendant's application for a stay of execution of the judgment dated 28 February 2014 pending the conclusion of his appeal.

JOBNAME: No Job Name PAGE: 4 SESS: 1 OUTPUT: Mon Aug 11 15:22:58 2014

EVALUATION AND FINDINGS OF THE COURT

[6] It is trite law that a stay will not be granted unless there are special circumstances. In the case of *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 CLJ 380, the Court of Appeal referred to the decision of the High Court in *Leong Poh Shee v Ng Kat Chong* [1966] 1 MLJ 86 where Raja Azlan Shah J (as His Highness then was) held as follows:

> Although the court has an unfettered discretion to grant a stay it has never been the practice to do so unless it is supported by an affidavit of special circumstances. The law on the point is well settled. I quote a passage from *Halsbury*'s *Laws of England*, (3rd Ed), Vol 16, para 51 at p 35: The court has an absolute and unfettered discretion as to the granting or refusing a stay, and as to the terms upon which it will grant it, and will, as a rule, only grant it if there are special circumstances, which must be deposed to an affidavit unless the application is made at the hearing.

[7] Has the defendant shown special circumstances in this case?

[8] In para 13 of his affidavit in support, specifically he deposes that what he meant by special circumstances whereby he was summoned by two individual and he worried that the judge will probably apply the judgment dated 28 February 2014 in those cases and this would prejudice his right to a fair trial in those cases.

[9] This in my view is not a special circumstance as it is trite law that each case would be decided on its own facts. Furthermore his averments were not supported by any evidence.

[10] The defendant deposes that if the judgment is not stayed: his appeal will be rendered nugatory. The defendant failed to elaborate and provide any evidence of how the judgment dated 28 February 2014 if enforced by the plaintiff, would render his appeal nugatory.

[11] He further deposes that the plaintiff will not be prejudiced and can be compensated by costs if stay order is granted and at the same time his status quo will be preserved pending the outcome of his appeal to the Court of Appeal. In this case, the monetary judgment of the court was for a sum of RM800,000 and costs of RM50,000. This judgment is monetary in nature. The defendant has never disputed the plaintiff's ability to repay the amount RM850,000 to the defendant in the event that the defendant is successful in his appeal.

[12] The court cannot overlook the argument of the plaintiff that a successful litigant should not be deprived of the fruits of his litigation. 'It is clear principle that the Court will not deprive a successful party of the fruits of his litigation until an appeal is determined' per Browne J in *Serangoon Garden*

JOBNAME: No Job Name PAGE: 5 SESS: 1 OUTPUT: Mon Aug 11 15:22:58 2014

Estate Ltd v Ang Keng [1953] 1 MLJ 116; see also *Ming Ann Holdings Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 CLJ 380. The plaintiff must be allowed to pursue to obtain the fruits of his litigation.

[13] The defendant has argued that there are merits in his appeal. On this point, learned counsel for the plaintiff has referred the court to the Federal Court case of *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 4 CLJ 1 where His Lordship Augustine Paul JCA had held that 'The merits of a party's case in a stay application is not a relevant matter for consideration'.

[14] The defendant have also applied for stay of execution order for injunction but there was no special circumstances deposes in the affidavit which is consistent with the legal principles in this area of the law.

[15] He verily believed that there are special circumstances for a stay order is granted.

[16] I carefully considered what the defendant avers to be special circumstances. Regretfully, I am unable to consider them as special circumstances.

[17] I find that there is no merit in the defendant's argument. In the final analysis, the prime consideration is whether the defendant had shown that there were special circumstances that would warrant a stay of execution and I am of the considered opinion that, the defendant had failed to show.

[18] Ultimately, there were no special circumstances to justify the grant of a stay of execution here.

[19] For the reasons given above the defendant's application for stay of execution pending the disposal of his appeal at the Court of Appeal is dismissed with costs.

Application dismissed with costs.

Reported by Afiq Mohamad Noor